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February 10, 1995

EX PARTE

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

RE: PR Docket No. 94-105; Petition of the People of the State of California
and the Public Utilities Commission of the State of California to Retain
Regulatory Authority Over Intrastate Cellular Service Rates

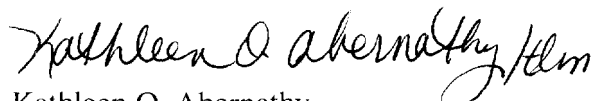
Dear Mr. Caton:

On Friday, February 10, 1995, Brian Kidney, Margaret Gill and I, on behalf of AirTouch Communications, met with David Solomon, Suzanne Tetreault, Peter Tenhula and Daniel Armstrong of the FCC's Office of General Counsel, and Michael Wack of the Wireless Bureau. We provided the attached information. Please associate this material with the above-referenced proceeding.

Two copies of this notice are being submitted to the Secretary in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me at 202-293-4955 should you have any questions or require additional information concerning this matter.

Sincerely,


Kathleen Q. Abernathy

Attachment

cc: Daniel Armstrong
David Solomon
Peter Tenhula
Suzanne Tetreault
Michael Wack

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FCC Jurisdiction Over Cellular Rates

AirTouch Communications
February 9, 1995

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

RESTRICTIONS ON REGULATION PENDING RESOLUTION OF THE CPUC PETITION

- States that had “in effect on June 1, 1993, any regulation concerning the rates for any commercial mobile service” may petition for authority “to continue exercising authority over such rates” (emphasis added) under Section 332(c)(3)(B).
- A state that files a petition under subsection (B) is granted limited authority to continue its “existing regulation” that had been in effect as of June 1, 1993 until this Commission acts on the state’s petition. Section 323(c)(3)(B).
- The most important components of the regulatory scheme the CPUC seeks to impose--including the requirement that cellular carriers unbundle their wholesale rates and that they interconnect to a reseller switch--are not part of California’s “existing regulation.” Those requirements were imposed upon the cellular carriers in a CPUC decision adopted on August 3, 1994. The CPUC’s attempt to use the mechanism of a petition under Section 332(c)(3)(B) to evade preemption of its newly-imposed regulations is plainly invalid.
- In imposing these new regulations, the CPUC contended that Section 332(c)(3)(B) broadly preserves its “authority to regulate,” rather than its “specific rules in effect” as of the statutory cut-off date [See CPUC Petition.] This construction cannot be squared with the actual statutory language. The statute does not refer to a state’s “regulatory authority,” but rather only to the state’s “existing regulation” in effect as of June 1, 1993. The CPUC’s interpretation reads the words “existing regulation” out of the statute.

CMRS Interconnection and Preemption

- CPUC attempting to require cellular carriers to interconnect their MTSO's with a reseller switch
- The interconnection order does not distinguish between intrastate and interstate calls
- Interconnection of interstate calls is clearly preempted under section 2(a) of the Communications Act
- FCC has already recognized that because of the inseparable nature of the physical plant used in interconnection, it has the authority to preempt intrastate interconnection arrangements. (Equal Access NPRM)
- FCC also asked question of whether it should "preempt any state from imposing [interconnection] obligations."
- California must not be allowed to extend its jurisdiction into the federal arena by mandating CMRS to CMRS interconnection.
- Any preemptive requirement by California that CMRS operators interconnect with a reseller switch will undermine the FCC's ability to implement a federal standard and policy.